



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA-2016-0065]

Reports, Forms, and Record keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The Federal Register Notice with a 60-day comment period was published on October 2, 2017.

DATES: Comments must be submitted to OMB on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, OMB, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Stephen Hench, Office of Chief Counsel (NCC-0100), Room W41-229, NHTSA, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202.366.2992.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before

an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the Federal Register providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation, see 5 CFR 1320.8(d), an agency must ask for public comment on the following:

- i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- iii) how to enhance the quality, utility, and clarity of the information to be collected; and
- iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following collection of information:

Title: Defect and Noncompliance Reporting and Notification

Type of Request: Renewal of a currently approved information collection

OMB Control Number: 2127-0004

Affected Public: Businesses or individuals

Abstract: The 60-day notice for this information collection received four (4) comments.

Two of these comments were anonymously submitted and discuss issues unrelated to this information collection (a SEC rule, and global temperature changes). One of these comments, submitted by Gary and Sherry Buckingham, queries: “Where and when will we know to get our air bags from Takata fixed?” Vehicle manufacturers are required to mail letters to vehicle owners notifying them when a remedy is available and how to obtain the free remedy. Additionally, individuals may consult NHTSA’s Takata Recall Spotlight website (<https://www.nhtsa.gov/recall-spotlight/takata-air-bags>), and utilize NHTSA’s VIN Look-Up Tool (available at <https://www.nhtsa.gov/recalls>), to obtain information including how the recalls may affect their specific vehicle(s). The final comment received was submitted by the Alliance of Automobile Manufacturers (Alliance) and the Association of Global Automakers (Global Automakers) (hereinafter collectively “Alliance & Global”). Alliance & Global offered comments on estimates related to safety recall reporting and owner notification obligations, as well as estimates related to manufacturer obligations under the Takata Coordinated Remedy Program. A summary of these comments is below with the corresponding burden estimates, along with the agency’s response.

This collection covers the information collection requirements found within various statutory sections in the Motor Vehicle Safety Act of 1966 (Act), 49 U.S.C. 30101, *et seq.*, that address and require manufacturer notifications to NHTSA of safety-related defects and failures to comply with Federal Motor Vehicle Safety Standards (FMVSS) in motor vehicles and motor vehicle equipment, as well as the provision of particular information related to the ensuing owner and dealers notifications and free remedy campaigns that follow those notifications. The sections

of the Act imposing these requirements include 49 U.S.C. 30118, 30119, 30120, and 30166.

Many of these requirements are implemented through, and addressed with more specificity in, 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports* (Part 573) and 49 CFR 577, *Defect and Noncompliance Notification* (Part 577).

Pursuant to the Act, motor vehicle and motor vehicle equipment manufacturers are obligated to notify, and then provide various information and documents to, NHTSA in the event a safety defect or noncompliance with Federal Motor Vehicle Safety Standards (FMVSS) is identified in products they manufactured. *See* 49 U.S.C. 30118(b) and 49 CFR 573.6.

Manufacturers are further required to notify owners, purchasers, dealers, and distributors about the safety defect or noncompliance. *See* 49 U.S.C. 30118(b), 30120(a); 49 CFR 577.7, 577.13.

Manufacturers are required to provide to NHTSA copies of communications pertaining to recall campaigns that they issue to owners, purchasers, dealers, and distributors. *See* 49 U.S.C. 30166(f); 49 CFR 573.6(c)(10).

Manufacturers are also required to file with NHTSA a plan explaining how they intend to reimburse owners and purchasers who paid to have their products remedied before being notified of the safety defect or noncompliance, and explain that plan in the notifications they issue to owners and purchasers about the safety defect or noncompliance. *See* 49 U.S.C. 30120(d) and 49 CFR 573.13. Manufacturers are further required to keep lists of the respective owners, purchasers, dealers, distributors, lessors, and lessees of the products determined to be defective or noncompliant and involved in a recall campaign, and are required to provide NHTSA with a minimum of six quarterly reports reporting on the progress of their recall campaigns. *See* 49

CFR 573.8 and 573.7, respectively.

In addition, in an enforcement action, certain manufacturers may be required by administrative order to conduct supplemental recall communications utilizing non-traditional means (e.g., text messaging, social media) crucial to achieving completion of a unique, large-scale recall. Presently, NHTSA is overseeing manufacturer recalls of unprecedented complexity involving Takata air bag inflators, where it has required such supplemental owner communications.¹

The Act and Part 573 also contain numerous information collection requirements specific to tire recall and remedy campaigns. These requirements relate to the proper disposal of recalled tires, including a requirement that the manufacturer conducting the tire recall submit a plan and provide specific instructions to certain persons (such as dealers and distributors) addressing that disposal, and a requirement that those persons report back to the manufacturer certain deviations from the plan. *See* 49 U.S.C. 30120(d) and 49 CFR 573.6(c)(9). The regulations also require that manufacturers report to NHTSA intentional and knowing sales or leases of defective or noncompliant tires.

49 U.S.C. 30166(n) and its implementing regulation found at 49 CFR 573.10 mandate that anyone who knowingly and willfully sells or leases for use on a motor vehicle a defective tire or a tire that is not compliant with FMVSS, and with actual knowledge that the tire manufacturer has notified its dealers of the defect or noncompliance as required under the Act, is

¹ *See* “Notice of Coordinated Remedy Program Proceeding for the Replacement of Certain Takata Air Bag Inflator,” available at <https://www.regulations.gov/docket?D=NHTSA-2015-0055>.

required to report that sale or lease to NHTSA no more than five working days after the person to whom the tire was sold or leased takes possession of it.

Estimated Burden: The existing information collection associated with 49 CFR Part 573 and portions of 49 CFR Part 577 currently has an estimated annual burden of 36,070 hours associated with an estimated 275 respondents per year.² Our prior estimates of the burden hours and cost associated with the requirements currently covered by this information collection require adjustment as follows.

Based on current information, we estimate 274 distinct manufacturers filing an average of 963 Part 573 Safety Recall Reports each year. This is a change from our previous estimate of 854 Part 573 Safety Recall Reports filed by 275 manufacturers each year. In addition, with reference to the metric associated with NHTSA's VIN Look-up Tool regulation, see 49 CFR 573.15, we estimate it takes the 17 major passenger-vehicle manufacturers (that each produce more than 25,000 vehicles annually) more burden hours to complete these Reports to NHTSA. See 81 FR 70270 (October 11, 2016). Between 2014 and 2016, the major passenger-vehicle manufacturers collectively conducted an average of 299 recalls annually.

We estimate that maintenance of the required owner, purchaser, dealer, and distributor lists requires 8 hours a year per manufacturer. Alliance & Global commented that it was unclear what this task involves, but that "[i]f it includes obtaining the data and curating it for accuracy on a weekly or biweekly basis, this estimate is far too low." Without more information, it is difficult for NHTSA to revise its estimate in light of this comment. However, we note that this

list maintenance involves tasks necessary to ensure a company has accurate records (e.g., names and addresses) of owners, purchasers, dealers, and distributors for use in discharging recall-notification obligations under 49 CFR Parts 573 and 577, and that the amount of data and nature of information curation will vary from manufacturer to manufacturer. NHTSA continues to estimate at this time that maintenance of the required owner, purchaser, dealer, and distributors lists requires 8 hours a year per manufacturer.

We estimated that it takes a major passenger-vehicle manufacturer 20 burden hours, on average, to prepare and file their Part 573 Reports. In a previous agency response to prior comments from Nissan North America, Inc. (Nissan), we acknowledged that major passenger-vehicle manufacturers may require more burden hours to file these reports, and agreed with Nissan's estimate of 20 burden hours for this requirement. *See* 81 FR 70270 (October 11, 2016). Alliance & Global here provide further input on this metric as it bears on major passenger-vehicle manufacturers, commenting that as a "best fit" of information collected from its member companies, its members spend 40 hours completing each Part 573 Recall Report. NHTSA repeats its observations that most manufacturers who conduct safety recalls are not major passenger-vehicle manufacturers, and that most other manufacturers include very few products in the average safety recall. NHTSA further observes that many members of the Alliance & Global are major passenger-vehicle manufacturers, and that therefore its comments are more representative of, and applicable to the burdens for, such manufacturers. NHTSA thanks the Alliance & Global for its comment, and now estimates that the major passenger-vehicle

² *See* 81 FR 70269 (October 11, 2016).

manufacturers will require 40 burden hours to prepare and file their Part 573 Recall Reports.

NHTSA continues to estimate it takes all other manufacturers 4 hours to prepare and file their Part 573 Recall Reports.

Accordingly, we estimate the annual burden hours related to the reporting to NHTSA of a safety defect or noncompliance for the 17 major passenger vehicle-manufacturers to be 11,960 hours annually (299 notices x 40 hours/report), and that all other manufacturers require a total of 2,656 hours annually (664 notices x 4 hours/report) to file their notices. Accordingly, the estimated annual burden hours related to the reporting to NHTSA of a safety defect or noncompliance is 16,808 hours (11,960 hours + 2,656 hours) + (274 MFRs x 8 hours to maintain purchaser lists).³

We estimate that an additional 40 hours will be needed to account for major passenger-vehicle manufacturers adding details to Part 573 Safety Recall Reports relating to the intended schedule for notifying its dealers and distributors, and tailoring its notifications to dealers and distributors in accordance with the requirements of 49 CFR 577.13. For all other manufacturers, an additional 2 hours will be needed to account for this obligation. This burden is estimated at 13,288 hours annually (664 notices x 2 hours/notification) + (299 notices x 40 hours/notification).

49 U.S.C. 30166(f) requires manufacturers to provide the Agency copies of all communications regarding defects and noncompliances sent to owners, purchasers, and

³ For more information about how we derived these and certain other estimates please see 81 FR 70269 (October 11, 2016).

dealerships. Manufacturers must index these communications by the year, make, and model of the vehicle as well as provide a concise summary of the subject of the communication. We estimated this burden requires 30 minutes for each vehicle recall. Alliance & Global commented that as a “best fit” of information collected from its member companies, its members spend 3 hours per recall on this requirement. NHTSA does acknowledge that its previous estimate could have been low, particularly in the case of larger recalls involving a diverse group of vehicle years, makes, and models, which Alliance & Global members may face more frequently than smaller manufacturers. Accordingly, NHTSA now estimates this burden to be 3 hours for the 17 major passenger-vehicle manufacturers. This totals an estimated 1,229 hours annually (299 recalls x 3 hours for the 17 major passenger-vehicle manufacturers) + (664 recalls x .5 for all other manufacturers).

In the event a manufacturer supplied the defective or noncompliant product to independent dealers through independent distributors, that manufacturer is required to include in its notifications to those distributors an instruction that the distributors are to then provide copies of the manufacturer’s notification of the defect or noncompliance to all known distributors or retail outlets further down the distribution chain within five working days. *See* 49 CFR 577.7(c)(2)(iv). As a practical matter, this requirement would only apply to equipment manufacturers since vehicle manufacturers generally sell and lease vehicles through a dealer network, and not through independent distributors. We believe our previous estimate of 95 equipment recalls per year needs to be adjusted to 87 equipment recalls per year to better reflect recent data. Although distributors are not required to follow that instruction, we expect that they

will, and have estimated the burden associated with these notifications (identifying retail outlets, making copies of the manufacturer's notice, and mailing) to be 5 hours per recall campaign.

Assuming an average of 3 distributors per equipment item, (which is a liberal estimate given that many equipment manufacturers do not use independent distributors) the total number of burden hours associated with this third-party notification burden is approximately 1,305 hours per year (87 recalls x 3 distributors x 5 hours).

As for the burden linked with a manufacturer's preparation of and notification concerning its reimbursement for pre-notification remedies, we estimated that the preparation of a reimbursement plan takes approximately 4 hours annually, an additional .5 hours is spent tailoring each plan to particular defect and noncompliance notifications to NHTSA and adding tailored language about the plan to a particular safety recall's owner notification letters, and an additional 12 hours annually is spent disseminating plan information. Alliance & Global commented that as a "best fit" of information collected from its member companies, its members spend 1.5 hours, instead of .5 hours, tailoring reimbursement plans for a given recall.

NHTSA appreciates Alliance & Global's comment, and acknowledges that its previous estimate could have been low, particularly in the case of larger recalls involving a diverse group of vehicle years, makes, and models, which Alliance & Global members may face more frequently than smaller manufacturers. NHTSA now estimates this burden to be 1 hour for the 17 major passenger-vehicle manufacturers. Incorporating this revision, for this burden NHTSA estimates a total 5,165 annual hours (274 MFRs x 4 hours to prepare plan) + [(299 recalls x 1.5 hours tailoring plan for each recall for 17 major passenger-vehicle manufacturers) + (664 recalls

x .5 tailoring plan for all other manufacturers)] + (274 MFRs x 12 hours to disseminate plan information)).

The Safety Act and 49 CFR Part 573 also contain numerous information collection requirements specific to tire recall and remedy campaigns, as well as a statutory and regulatory reporting requirement that anyone who knowingly and intentionally sells or leases a defective or noncompliant tire notify NHTSA of that activity.

Manufacturers are required to include specific information related to tire disposal in the notifications they provide NHTSA concerning identification of a safety defect or noncompliance with FMVSS in their tires, as well as in the notifications they issue to their dealers or other tire outlets participating in the recall campaign. *See* 49 CFR 573.6(c)(9). We estimate that the agency administers 12 tire recalls each year, on average. We estimate that the inclusion of this additional information will require an additional two hours of effort beyond the subtotal above associated with non-tire recall campaigns. This additional effort consists of one hour for the NHTSA notification and one hour for the dealer notification for a total of 24 burden hours (12 tire recalls a year x 2 hours per recall).

Manufacturer-owned or controlled dealers are required to notify the manufacturer and provide certain information should they deviate from the manufacturer's disposal plan. Consistent with our previous analysis, we ascribe zero burden hours to this requirement since to date no such reports have been provided and our original expectation that dealers would comply with manufacturers' plans has proven true.

Accordingly, we estimate 24 burden hours a year will be spent complying with the tire recall campaign requirements found in 49 CFR 573.6(c)(9).

The agency recently received one report under 49 U.S.C. 30166(n) and its implementing regulation at 49 CFR 573.10 of a defective or noncompliant tire being intentionally sold or leased, so our previous estimate of zero burden hours for this regulatory requirement is being revised. The agency estimates 1 burden hour annually will be spent preparing and submitting such reports.

We continue to believe nine vehicle manufacturers, who did not operate VIN-based recalls lookup systems prior to August 2013, incur certain recurring burdens on an annual basis. We continue to estimate that 100 burden hours will be spent on system and database administrator support. These 100 burden hours include: backup data management and monitoring; database management, updates, and log management; and data transfer, archiving, quality assurance, and cleanup procedures. We estimate another 100 burden hours will be incurred on web/application developer support. These burdens include: operating system and security patch management; application/web server management; and application server system and log files management. We estimate these burdens will total 1,800 hours each year (9 MFRs x 200 hours). We estimate the recurring costs of these burden hours will be \$30,000 per manufacturer.⁴ We estimate that the total cost to the industry from these recurring expenses will total \$270,000, on an annual basis (9 MFRs x \$30,000).

⁴ \$8,000 (for data center hosting for the physical server) + \$12,000 (for system and database administrator support) + \$10,000 (for web/application developer support) = \$30,000.

Changes to 49 CFR Part 573 in 2013 required 27 manufacturers to update each recalled vehicle's repair status no less than every 7 days, for 15 years from the date the VIN is known to be included in the recall. This ongoing requirement to update the status of a VIN for 15 years continues to add a recurring burden on top of the one-time burden to implement and operate these online search tools. We estimate that 8 affected motorcycle manufacturers will make recalled VINs available for an average of 2 recalls each year and 19 affected passenger-vehicle manufacturers will make recalled VINs available for an average of 8 recalls each year. We believe it will take no more than 1 hour, and potentially much less with automated systems, to update the VIN status of vehicles that have been remedied under the manufacturer's remedy program. We estimate this will require 8,736 burden hours per year ($1 \text{ hour} \times 2 \text{ recalls} \times 52 \text{ weeks} \times 8 \text{ MFRs} + 1 \text{ hour} \times 8 \text{ recalls} \times 52 \text{ weeks} \times 19 \text{ MFRs}$) to support the requirement to update the recalls completion status of each VIN in a recall at least weekly for 15 years.

As the number of Part 573 Recall Reports has increased in recent years, so has the number of quarterly reports that track the completion of safety recalls. Our previous estimate of 3,800 quarterly reports received annually is now revised upwards to 4,498 quarter reports received annually. We estimated it takes manufacturers 10 minutes to gather the pertinent information for each quarterly report, and 4 additional hours annually for the 17 major passenger-vehicle manufacturers to electronically submit their reports. Alliance & Global commented that as a "best fit" of information collected from its member companies, its members spend 1 hour (instead of 10 minutes) gathering pertinent information for each quarterly report, and 10 hours annually (instead of 4 hours) in additional time related to submitting their reports.

As NHTSA previously observed in revising its estimate—in light of comments from Nissan—the gathering of pertinent information is likely automated through electronic reporting. *See* 81 FR 70270 (October 11, 2016) (adopting Nissan’s estimate of 10 minutes). However, we now recognize that the degree of automation of these processes may vary across manufacturers. Accordingly, we adopt Alliance & Global’s estimate of 1 hour.

NHTSA’s estimate of 4 additional related hours annually for the 17 major passenger-vehicle manufacturers to electronically submit their reports was based on an estimate of time, in response to a comment from Nissan, to electronically submit reports each quarter (for up to 30 recalls in each given quarter). *See* 81 FR 70270 (October 11, 2016). NHTSA recognizes that major passenger-vehicle manufacturers may have more than 30 recalls on which to report for a given quarter, and will also include an additional six (6) hours for the 17 major passenger-vehicle manufacturers, for a total of ten (10) burden hours. We therefore now estimate that the quarterly reporting burden pursuant to Part 573 totals 4,668 hours [(4,498 quarterly reports x 1 hour/report) + (17 MFRs x 10 additional hours for electronic submission)].

We continue to estimate a small burden of 2 hours annually in order to set up a manufacturer’s online recalls portal account with the pertinent contact information and maintaining/updating their account information as needed. We estimate this will require a total of 548 hours annually (2 hours x 274 MFRs).

We estimated that 20 percent of Part 573 reports will involve a change or addition regarding recall components, and that at one hour per amended report, this totals 193 burden hours per year. Alliance & Global implicitly commented on the 20 percent figure, assuming in

its proposed burden estimate that all recalls involve a change or addition regarding recall components. However, not all recalls require such a change, and Alliance & Global do not offer an alternative figure and/or further explanation of their estimate. Accordingly, NHTSA will retain the 20-percent figure in its estimate. Alliance & Global did, however, comment that this task generally takes its members at least two (2) hours per recall, and “more in complex matters,” and NHTSA acknowledges that its previous estimate could have been low—particularly in the case of larger recalls involving a diverse group of vehicle years, makes, and models. NHTSA is adding another hour to this burden estimate for the 17 major passenger-vehicle manufacturers, recognizing that many recalls are conducted by smaller manufacturers but, at the same time, the burden may be more than 2 hours for complex recalls that Alliance & Global members may more often face. NHTSA now estimates the burden associated with a change or addition regarding recall components at 253 burden hours per year (299 recalls for 17 major passenger-vehicle manufacturers $\times .20 = 60$ recalls; $60 \times 2 = 120$ hours) + (664 recalls for all other manufacturers $\times .20 = 133$ recalls $\times 1 = 133$).

As to the requirement that manufacturers notify NHTSA in the event of a bankruptcy, we expect this notification to take an estimated 2 hours to draft and submit to NHTSA. We continue to estimate that only 10 manufacturers might submit such a notice to NHTSA each year, so we calculate the total burden at 20 hours (10 MFRs \times 2 hours).

We estimated that it takes manufacturers an average of 8 hours to draft their notification letters, submit them to NHTSA for review, and then finalize them for mailing to their affected owners and purchasers. Alliance & Global commented that it believed its members generally

require 11 hours on average for these tasks. NHTSA does acknowledge its estimate may be low for major passenger-vehicle manufacturers, of which much of Alliance & Global are comprised. Accordingly, we estimate that the 49 CFR Part 577 requirements result in 8,601 burden hours annually $(8 \text{ hours per recall} \times 664 \text{ recalls per year}) + (11 \text{ hours per recall} \times 299)$.

The burden estimate associated with the regulation that requires interim owner notifications within 60 days of filing a Part 573 Safety Recall Report must be revised upward. We previously calculated that about 10 percent of past recalls require an interim notification mailing, but recent trends show that 12 percent of recalls require an interim owner notification mailing. We continue to estimate the preparation of an interim notification can take up to 10 hours. We therefore estimate that 1160 burden hours are associated with the 60-day interim notification requirement $(963 \text{ recalls} \times .12 = 116 \text{ recalls}; 116 \text{ recalls times } 10 \text{ hours per recall} = 1160 \text{ hours})$.

As for costs associated with notifying owners and purchasers of recalls, we continue to estimate a cost of \$1.50 per first class mail notification, on average. This cost estimate includes the costs of printing, mailing, as well as the costs vehicle manufacturers may pay to third-party vendors to acquire the names and addresses of the current registered owners from state and territory departments of motor vehicles. In reviewing recent recall figures, we determined that an estimated 75.8 million letters are mailed yearly totaling \$113,700,000 $(\$1.50 \text{ per letter} \times 75,800,000 \text{ letters})$. The requirement in 49 CFR Part 577 for a manufacturer to notify their affected customers within 60 days would add an additional \$13,644,000 $(75,800,000 \text{ letters} \times .12 \text{ requiring interim owner notifications} = 9,096,000 \text{ letters}; 9,096,000 \times \$1.50 = \$13,644,000)$. In

total, we estimate that the current 49 CFR Part 577 requirements cost manufacturers a total of \$127,614,000 annually (\$113,700,000 for owner notification letters + \$13,644,000 for interim notification letters + \$270,000 for VIN Look-up Tool operation = \$127,614,000).

NHTSA further has authority to require that, in an enforcement action, vehicle manufacturers conduct supplemental recall communications, potentially utilizing non-traditional means (e.g., text messaging, social media). This is currently occurring in the Takata recalls, which involve 19 vehicle manufacturers and approximately 46 million defective inflators currently under recall in approximately 34 million vehicles that need to be recalled as quickly as possible, given that thirteen people in the United States have lost their lives to a rupturing Takata inflator and more than two hundred people have reported associated injuries, many of which were disfiguring or life-threatening. The scope of the Takata recalls is unprecedented in the agency's history. Therefore, the below analysis only takes into account the expected paperwork burden of this collection over the next three years, without making any assumptions about the likelihood of another large-scale recall that leads to similar types of supplementary notices. However, the agency believes the lessons learned from the Takata recall will provide a useful guidepost in structuring any similar future action.

To address the scope and complexity of the Takata recalls, NHTSA issued a Coordinated Remedy Order, as amended on December 9, 2016 (the "ACRO"), which requires affected vehicle manufacturers to conduct supplemental owner notification efforts in coordination with NHTSA and the Independent Monitor of Takata. On December 23, 2016, the Monitor, in consultation with NHTSA, issued Coordinated Communications Recommendations for vehicle owner

outreach (“CCRs”), which includes a recommendation that vehicle manufacturers provide at least one form of consumer outreach per month for vehicles in a launched recall campaign (i.e., a recall where parts are available) until the vehicle is remedied (unless otherwise accounted for as scrapped, stolen, exported, or otherwise unreachable under certain procedures in the ACRO). *See* CCRs ¶ 1(b); ACRO ¶¶ 45–46. The Monitor also recommended that manufacturers utilize at least three non-traditional means of communication (postcards; email; telephone calls; text message; social media) as part of their overall outreach strategy. *See* CCRs ¶ 1(a). If a vehicle manufacturer does not wish to follow the Monitor’s recommendations, the ACRO permits the manufacturer to propose an alternative communication strategy to NHTSA and the Monitor.

Alliance & Global commented that supplemental recall communications are not mandatory. NHTSA acknowledges this is generally the rule (although the agency may require a manufacturer to provide additional notifications if it determines the initial notification did not result in an adequate number of remedied vehicles or equipment, see 49 U.S.C. 30119(e), 49 C.F.R. 577.10), and appreciates manufacturers’ efforts in furtherance of the shared goal of remedying as many vehicles affected by the Takata recalls as possible. Alliance & Global also cited to a Notice of Proposed Rulemaking regarding additional owner notifications, and drew a parallel between potential burdens associated with that rulemaking and this information collection. NHTSA appreciates the parallel, but emphasizes that the ACRO and CCRs prescribe distinct requirements pursuant to NHTSA’s enforcement authority, and that neither those documents nor this notice involve a rulemaking.

Alliance & Global also commented that “NHTSA did not identify all of the Takata ACRO and related tasks that are subject to PRA approval,” and that the burden estimates should be revised accordingly. Alliance & Global thereafter listed additional “tasks” under the ACRO, with associated burdens for which they believe NHTSA must account here.⁵

NHTSA recognizes the ACRO sets forth various requirements in addition to the consumer outreach described above, but believes the investigatory exception to the PRA, which specifically exempts collections of information “during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities,” applies to such requirements. 5 C.F.R. §§ 1320.3(c), 1320.4(a)(2); 44 U.S.C. § 3501 *et seq.* Accordingly, NHTSA’s responses to comments and burden estimates here are with respect only to the monthly outreach requirements outlined above.

The Monitor’s recommendations for outreach were adopted in significant part because research supports that frequent notifications using non-traditional means results in improved remedy completion. The agency cited several sources in its 60-day notice⁶ with which Alliance & Global took issue, stating that “NHTSA did not explain how supplemental communications contemplated by the ACRO and the CCR are ‘necessary for the proper performance of the functions of the agency, including whether the information will have practical utility’” as

⁵ Alliance & Global, while identifying requirements, do not offer an estimate of the associated burdens—observing they “are striving to collect aggregated data to permit an informed estimate of the time and cost of these tasks, and intends to provide supplemental comments to aid the agency’s evaluation of these burdens.”

⁶ See 82 FR 45941; GM Safety Recalls: *Innovations in Customer Outreach* (NHTSA Retooling Recalls Workshop, April 28, 2015); Auto Alliance & NADA Survey Key Findings (November 2015); GM letter to NHTSA in comment to NPRM, Docket No. NHTSA-2016-0001 (March 23, 2016); Susanne Schmidt & Martin Eisend, *Advertising Repetition: A Meta-Analysis on Effective Frequency in Advertising*, 44 J. ADVERTISING 415, 425 (2015); Blair

required by OMB regulations. In relevant part, Alliance & Global’s basis for this assertion appears to be that NHTSA did not specifically prove that a monthly cadence of outreach was more effective than other outreach frequencies because NHTSA only cited to general research regarding outreach frequency in support of this proposition. NHTSA recognizes that these sources did not specifically conclude that monthly notifications (instead of, e.g., weekly, bi-weekly, bi-monthly, etc.) are always the most effective. But the sources to which NHTSA cites all tend toward advocating greater notification frequency—not less—and Alliance & Global do not point to any sources of their own that stand specifically for the contrary. The very nature of the Takata recalls—unprecedented and, as Alliance & Global recognize, “extraordinary”—means that no research will be perfectly on-point, and that in addition to relying on lessons learned as the recall campaigns continue, it is prudent to rely on other sources of probative information, including information from relatively analogous settings such as advertising, where the purpose is to locate specific consumers and effectively communicate a specific message to those consumers. The underlying principle, of frequent outreach via multiple communications methods, is supported by the available information, including a recently released report from the U.S. Government Accountability Office,⁷ as well as a report from Independent Monitor specific to the very recalls at issue here.⁸

Entenmann, MARKETING HELP!, *The Principles of Targeted Direct Mail Advertising* (2007); Chuck Flantroy, *Direct Mail Works: The Power of Frequency*, KESSLER CREATIVE (August 31, 2016).

⁷ See U.S. Government Accountability Office, *Auto Recalls: NHTSA Should Take Steps to Further Improve the Usability of Its Website* (GAO-18-127) (Dec. 4, 2017), at 10–11, 13–15 (indicating articulated safety risk is the most influential factor in owners’ decision to obtain repair, and that owners have additional preference for receiving recall notification by electronic means).

⁸ See The Independent Monitor of Takata and Coordinated Remedy Program, *The State of the Takata Airbag Recalls*

In a similar vein, the agency is also aware of generalized concerns about “notification fatigue,” and invited comment on this phenomenon, including the optimal frequency, content, mode, and method of recall/defects notifications from manufacturers to consumers. The agency previously stated its interest in any research or data on consumer “fatigue” that relates to a recall with potential consequences of death or severe injury, as in the case of the Takata recalls.

Alliance & Global did not provide any information on this issue. Instead, Alliance & Global noted that they are unaware of data-based research that supports the notion that outreach pursuant to the ACRO actually results in improved remedy completion. Setting aside findings of the Independent Monitor that indicate otherwise, see n.8, this also implicitly recognizes the central issue: The Takata recalls are unprecedented, and that while it may be “that no one knows ‘the optimal frequency, content, mode and method’ of communicating with consumers about recalls, including whether ‘more’ is always ‘better,’” the studies NHTSA cites indicate that more is in fact better. Alliance & Global have cited no studies of their own to the contrary.

In any event, NHTSA appreciates Alliance & Global’s comments as part of the ongoing dialogue to better understand the relationship between recall notification and recall completion. NHTSA has met, and continues to meet, with numerous manufacturers to discuss this very issue, including at regularly scheduled meetings for the vehicle manufacturers affected by the Takata air

(Nov. 15, 2017), Section VIII.A, *available at* https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/the_state_of_the_takata_airbag_recalls-report_of_the_independent_monitor_112217_v3_tag.pdf. (“[T]he Monitor’s research to date indicates that communications regarding the recalls should be frequent and clearly written with a call to action. . . . [and] shows that in cases of highly dangerous recalls, affected vehicle owners want to be notified with urgent, disruptive messages, repeated with great frequency in order to better ensure they become aware of the issue and understand its gravity.”).

bag inflator recalls. As Alliance & Global acknowledge, affected vehicle manufacturers have been working with the Independent Monitor to improve outreach results in the Takata recalls, which should result in further understanding of the issue. NHTSA will continue to monitor the development of knowledge in this area, and looks forward to future collaboration with manufacturers.

The volume of outreach required by the ACRO and the CCRs (and the costs associated with that outreach) is a function of the number of unrepaired vehicles that are in a launched campaign and are not otherwise accounted for as scrapped, stolen, exported, or otherwise unreachable. The schedule in Paragraph 35 of the ACRO delineates the expected remedy completion rate, by quarter, of vehicles in a launched remedy campaign.

NHTSA estimated a yearly average of 19 vehicle manufacturers issuing monthly supplemental communications over the next three years pursuant to the ACRO and the CCRs. Manufacturers may satisfy the CCRs through third-party vendors (which many manufacturers are already utilizing), in-house strategies, or some combination thereof. NHTSA estimated the cost for supplemental communications at \$0.44 per VIN per month.

Utilizing these variables, we estimated an initial annualized cost contemplated by the ACRO and CCRs over the next three years of \$43,557,722 per year, and discounted this annualized cost by the cost of outreach efforts settling defendants in the Southern District of Florida multi-district litigation (Toyota, Subaru, Nissan, BMW, Mazda, and Honda) are required to conduct pursuant to their respective settlements—which amounted to a discount of \$15,721,393. *See generally In re: Takata Airbag Products Liab. Litig.*, 14-cv-24009, MDL No.

2599 (S.D. Fla.). Those outreach programs are to utilize non-traditional methods of outreach, including telephone, email, social media, and text messaging, and NHTSA anticipated they will produce outreach that would satisfy the minimum requirements of the CCRs. In total, therefore, we estimated the annualized burden at \$27,836,329. NHTSA also estimated it would take manufacturers 2 hours each month to draft or customize supplemental recall communications utilizing non-traditional means, submit them to NHTSA for review, and finalize them to send to affected owners and purchasers.

Alliance & Global commented that, even assuming a cost of \$0.44/VIN, monthly outreach costs would actually total \$108 million per year based on the number of unremedied vehicles stated in the Independent Monitor's report, *The State of Takata Airbag Recalls* (November 15, 2017). NHTSA notes, however, that such an estimate assumes that none of those vehicles would actually be repaired (and therefore not subject to outreach requirements) at any point during a given year—a factor that NHTSA's methodology did take into account, with reference to the schedule set forth in Paragraph 35 of the ACRO.

Alliance & Global also commented that the cost burden of this outreach “is far more than \$0.44/VIN on average and requires more than 2 hours per month to prepare and administer.” Alliance & Global, however, provide an unclear picture of alternative estimates, offering only “initial average estimates” of \$2 to \$5/VIN, and then observing that other initiatives “can further increase costs as high as approximately \$30 to more than \$100/VIN.” Indeed, at this time Alliance & Global can only provide what it refers to be a low-end estimate of a burden close to \$40 million/month for its members affected by the Takata recalls, “expect[ing] to refine [their]

estimates in supplemental comments.” And Alliance & Global offered no alternative estimate to the NHTSA’s estimated burden of 2 hours per month to prepare and administer non-traditional outreach.

Alliance & Global appear to admit that their cost estimates are at most preliminary, and therefore it is difficult for NHTSA to significantly revise its cost estimate based on these comments. However, NHTSA appreciates Alliance & Global’s input, which provides useful insight into the cost of these outreach programs—about which to this point NHTSA has had relatively little information. NHTSA further recognizes per-VIN outreach costs can vary significantly depending on the vehicles and owners involved, as well as the particular strategies manufacturers have selected to engage in consumer outreach for different recalls at different levels of maturity. Accordingly, NHTSA accepts Alliance & Global’s assertion that, on average, a per-VIN-per-month outreach estimate of \$0.44 is low, and will revise its estimate to \$2/VIN per month. NHTSA will retain its estimated burden of 2 hours per month to prepare and administer non-traditional outreach. NHTSA looks forward to additional insights it may gain from supplemental information Alliance & Global may submit.

Alliance & Global also commented that discounting the annualized outreach costs by costs of anticipated outreach pursuant to MDL settlements was not “an appropriate baseline for this cost analysis.” Alliance & Global stated the outreach efforts the settling manufacturers were conducting pursuant to the ACRO and CCRs facilitated their MDL settlements, and that the ACRO and CCRs predated the MDL settlements. Alliance & Global also posited that it is “premature” to assume outreach efforts under the ACRO and CCRs will satisfy the MDL

settlement obligations. Assuming, for the sake of argument, that the ACRO and CCRs “facilitated” the MDL settlements, it is of no consequence; going forward, those settling vehicle manufacturers must comply with the terms of their respective settlements, which include provisions for enhanced outreach efforts. While NHTSA acknowledges the exact nature of this outreach is presently unclear, at this juncture NHTSA anticipates it is more likely than not that the outreach efforts conducted under the settlements would satisfy the minimum requirements of the ACRO and CCRs. Alliance & Global have provided no indication otherwise.

Accordingly, NHTSA estimates the terms of the ACRO and the CCRs, assuming remedy-completion rates consistent with those set forth in the former, contemplate an initial annualized cost of \$197,989,647 per year for the next three years (2018–2020), with an annualized discount of \$71,460,877 to account for outreach conducted pursuant to the MDL settlements described above, for a net annualized cost of \$126,528,770. NHTSA estimates that manufacturers will take an average of 2 hours each month drafting or customizing supplemental recall communications utilizing non-traditional means, submitting them to NHTSA for review, and finalizing them to send to affected owners and purchasers. NHTSA therefore estimates that 456 burden hours annually are associated with issuing these supplemental recall communications (12 months x 2 hours per month x 19 manufacturers = 456 hours).

Because of the forgoing burden estimates, we are revising the burden estimate associated with this collection. The 49 CFR Part 573 and 49 CFR Part 577 requirements found in today’s notice will require 63,606 hours each year. Additionally, manufacturers impacted by 49 CFR Part 573 and 49 CFR Part 577 requirements will incur a recurring annual cost estimated at

\$127,614,000 total. The burden estimate in this collection contemplated for conducting supplemental recall communications under the ACRO to achieve completion of the Takata recalls is 456 hours each year. Additionally, the ACRO contemplates impacted vehicle manufacturers incurring an annual cost estimated at \$126,528,770. Therefore, in total, we estimate the burden associated with this collection to be 64,062 hours each year, with a recurring annual cost estimated at \$254,142,770.

Estimated Number of Respondents –

NHTSA estimates that there will be approximately 274 manufacturers per year filing defect or noncompliance reports and completing the other information collection responsibilities associated with those filings. NHTSA estimates there will be an average of 19 manufacturers each year conducting supplemental nontraditional monthly outreach pursuant to administrative order in an enforcement action associated with the Takata recall.

Jeffrey Giuseppe,

Associate Administrator for Enforcement.

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